

Unfair Trade Practices and Consumer Protection Law

73 P.S. §§201-1 - 201-9.2
Often referred to as Pa's UDAP statute.

§201-2. Definitions

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- (3) “Trade” and “Commerce” are defined to include almost any type of consumer transaction, even a residential lease (Commonwealth v. Monumental Properties, 329 A.2d 812 (1974)) or real estate transaction. A one-time seller is covered.
- (4) “Unfair methods of competition” and “**unfair or deceptive acts or practices**”(UDAP) are defined as any one or more of the following:
- (i) Passing off goods or services as those of another;
 - (ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
 - (iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
 - (iv) Using deceptive representations or designations of geographic origin in connection with goods or services;
 - (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
 - (vi) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;
 - (vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
 - (viii) Disparaging the goods, services or business of another by false or misleading representation of fact;
 - (ix) Advertising goods or services with intent not to sell them as advertised;
 - (x) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

- (xi) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (xii) [Purchases with benefits contingent on post-purchase referrals];
- (xiii) [Chain-Letter Plans, Pyramid Clubs and similar schemes.]
- (xiv) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made;
- (xv) Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
- (xvi) Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;
- (xvii) Making solicitations for sales of goods or services over the telephone without first clearly, affirmatively and expressly stating [those things enumerated in the statute].
- (xviii) Using a contract, form or any other document related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action;
- (xix) [Mail and telephone solicitation shipping time requirements];
- (xx) [New motor vehicle rustproofing offer restrictions];
- (xxi) **Engaging in any other fraudulent or deceptive conduct, which creates a likelihood of confusion or of misunderstanding.** [often referred to as the catchall provision]

§201-3. Unlawful acts or practices & exclusions

Declares (i)-(xxi) above unlawful.

Also excludes any mediums publishing advertisements in good faith, without knowledge of any violation.

§201-3.1. Regulations

The Attorney General is authorized to adopt rules and regulations necessary for the enforcement and administration of this act.

§201-4. Restraining prohibited acts

The Attorney General or a District Attorney can bring an action for injunctive relief if that proceeding would be in the public interest.

§201-4.1. Payment of costs and restitution

In an action by the AG or DA, the court can order payment of costs and restitution for injured parties.

§201-5. Assurance of voluntary compliance

The AG may accept an assurance of voluntary compliance.

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§201-6. Deleted by amendment

§201-7. Contracts: effect of rescission

Right to rescind door-to-door or telephone sales within three business days. Required notice.

§201-8 Civil penalties

Penalties for failure to comply with an injunction or assurance of voluntary compliance as discussed in sections 4 and 5 above.

§201-9 Forfeiture of franchise or right to do business; appointment of receiver

Upon petition by the Attorney General, the court may order the dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates the terms of an injunction issued under section 4. In addition, the court may appoint a receiver of the assets of the company.

§201-9.1. Powers of receiver [appointed pursuant to 201-9]

§201-9.2. Private actions

(a) Any person who purchases or leases goods or services **primarily for personal, family or household purposes** and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover:

- i. actual damages or one hundred dollars (\$100), whichever is greater.**
- ii. up to three times the actual damages**
- iii. such additional relief as it deems necessary or proper**
- iv. costs and reasonable attorney fees.**

(b) Any permanent injunction, judgment or order of the court made under section 4 of this act shall be prima facie evidence in an action brought under section 9.2 of this act that the defendant used or employed acts or practices declared unlawful by section 3 of this act.

§201-9.3. Dog Purchaser Protection

Requires a health record and a health certificate issued by a veterinarian or a guarantee of good health from the seller. The statute specifies the information to be included in a health record, a health certificate issued by a vet, or a guarantee of good health by the seller. The statute also sets forth very specific remedies and when those remedies will and will not be available.

The Great Fraud Controversy of 201-2(4)(xxi), aka the Catchall

This prohibition was amended in 1997. It was formerly numbered 2(4)(xvii) and prohibited only “other fraudulent conduct,” rather than “other fraudulent or deceptive conduct.” Cases interpreting the old statutory language were split regarding whether the consumer should be required to prove the elements of common law fraud, with a number of Superior and Commonwealth Court decisions requiring it. Then in 2007, the Supreme Court, interpreting the pre-amendment version of the statute, held that justifiable reliance is required for consumer claims under the catchall. Toy v. Metropolitan Life Ins. Co., 928 A.2d 186 (Pa. 2007). Some decisions have, without noting the amendment, recited the language of older decisions that required a showing of common law fraud.

This history is important because opposing counsel in these cases will always cite the Toy case and are often successful with judges who don't want to bother with the convoluted, inconsistent caselaw and legislative intent.

The courts that have actually examined the issue closely have concluded, rightfully, that the legislative change is intended to broaden that catchall so that common law fraud is not required. Grimm v. Washington Mutual Bank, 2008 U.S. Dist. LEXIS 55628, 2008 WL 2858377 (W.D. Pa. July 22, 2008), Hansford v. Bank of America, 2008 WL 4078460, 2008 U.S. Dist. LEXIS 65502 (E.D. Pa. Aug. 22, 2008); Wilson v. Parisi, 549 F.Supp.2d 637 (M.D. Pa. 2008). For additional cites and a thorough discussion of this issue, see Carolyn Carter's “Pennsylvania Consumer Law,” section 2.5.4.21 (with 2010 supp.)

It is a good idea to avoid basing your case solely on the catchall if possible, to avoid this issue.

Notable violations of the catchall:

1. A landlord's egregious and continuous failure to maintain residential premises in a habitable condition. In re Clark, 96 B.R. 569 (Bankr. E.D. Pa. 1989)
2. Conversion of a tenant's personal property by a landlord. In re Clarkson, 105 B.R. 266 (Bankr. E.D. Pa. 1989)
3. Foreclosure rescue scams, i.e. misrepresentation by a “homesaver” that he would sell the debtor's home back to her, or sell it to a third party and return her a significant part of the proceeds. In re Bryant, 111 B.R. 474 (E.D. Pa. 1990)
4. An insurance company's promise of benefits it never intended to pay, premature termination of coverage, and miscalculation of benefits. Schroeder v. Acceleration Life Ins. Co., 972 F.2d 41 (3d Cir. 1992)

5. Failure of a finance company to disclose that obtaining a new loan may be much less expensive than refinancing the existing loan. In re Milbourne, 108 B.R. 522 (Bankr. E.D. Pa. 1989)
6. Promising one rate index for an adjustable rate mortgage, but then using a different, higher one. Le Bourgeois v. Firsttrust Savings Bank, 25 Phila. 249 (C.P. 1993)
7. Misrepresenting the savings that consumers would receive through a prescription drug plan. Commonwealth v. Peoples Benefit Services, 895 A.2d 683 (Pa. Cmwlth. 2006)

Additional claims:

- Add UTPCPL violation to violations of any other consumer protection law, since unlawful conduct itself is unfair and deceptive.
- Many consumer protection statutes have codified statements that indicate that the practices they prohibit are unfair and deceptive and therefore a violation of UTPCPL.
- The FCEUA, among others, explicitly states that violating that statute is also deemed a violation of UTPCPL.

Fair Credit Extension Uniformity Act

73 P.S. § 2270.1 et seq.

I. Overview

- A. FCEUA is Pennsylvania's analogue to the FDCPA and applies to both debt collectors and creditors. 73 P.S. § 2270.4.
- B. A debt collector's violation of any provision of the FDCPA constitutes a violation of the FCEUA, 73 P.S. § 2270.4(a), which constitutes a violation of the Consumer Protection Law.
- C. A creditor is liable under the FCEUA if it engages in any conduct declared unlawful by § 2270.4(b), which mirrors the FDCPA's proscriptions.

II. Definitions

- A. "Creditor": A person, including agents, servants or employees conducting business under the name of a creditor and within this Commonwealth, to whom a debt is owed or alleged to be owed. 73 P.S. § 2270.3
- B. "Debt." Obligation incurred for **personal, family or household purposes**.
 - 1. Does NOT include a purchase money mortgage on real estate, but DOES include refinancing mortgage.
 - 2. DOES include any amount owed as a tax to any political subdivision of this Commonwealth. Tax includes an assessment, any interest, penalty, fee or other amount permitted by law to be collected. DOES NOT include any such amount owed to the United States or the Commonwealth. 73 P.S. § 2270.3

III. Prohibitions on Creditors

A. "Unfair or Deceptive Acts or Practices":

- 1. Communications with a 3rd party to gain location information. 73 P.S. § 2270.4(b)(1)
 - a. must give identity, but cannot state name of creditor unless requested;
 - b. cannot state that the consumer owes a debt;
 - c. cannot contact more than once (except in very limited circumstances);
 - d. cannot send postcards or envelopes that show a debt is owed.
 - e. must communicate only with the attorney if s/he knows the debtor is represented
- 2. Communications with Debtor 73 P.S. § 2270.4(b)(2)

- a. only from 8am to 9pm
- b. no unusual times or places
- c. must communicate only with the attorney if s/he knows the debtor is represented
- d. cannot contact at place of employment if has reason to know employer prohibits it.
- e. No postcards or envelopes that show a debt is owed. 73 P.S. 2270.4(b)(6)

B. **“Harass, Oppress or Abuse”** 73 P.S. § 2270.4(b)(4). Examples:

3. Use or threat of use of violence or other criminal means to harm person, property or reputation
4. Use of obscene or profane language
5. Calling repeatedly or continuously
6. Calling without meaningful disclosure of identity

C. **“False, Deceptive or Misleading Representations or Means”** 73 P.S. § 2270.4(b)(5). Examples:

1. Implying “color of law” or government authority;
2. Misstating character, amount or legal status of debt;
3. Falsely implying that creditor is an attorney
4. **Representing or implying that nonpayment will result in arrest or imprisonment or the seizure, attachment or sale of any property unless such action is lawful and the creditor intends to take such action.**
5. Threatening to take any action that creditor does not intend to take or is illegal
6. Representing that transfer of debt to a legal department, attorney or collection agency will cause debtor to lose rights or defenses.
7. Alleging that the consumer committed a crime or fraud against the creditor.
8. Threatening to report false information to a credit bureau, including failing to report that a debt is disputed.
9. Falsely representing that documents are or are not legal process.

D. **“Unfair or unconscionable means”** 73 P.S. § 2270.4(b)(6). Examples:

1. Collecting any amount that is not authorized by creditor’s agreement with debtor.
2. Soliciting postdated checks that do not meet the requirements of FCEUA
3. Charges for collect phone calls if purpose of call is concealed.
4. Threatening to take property without authority.

IV. Enforcement

A. Federal Court can have jurisdiction if a federal claim is also filed. Dougherty v. Wells Fargo Home Loans, Inc., 425 F. Supp. 2d 599 (E.D. Pa. 2006)

B. Statute of Limitations: 2 years 73 P.S. § 2270.5(b)

- C. Violation of FCEUA is a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law at 73 P.S. § 201-9.2, which provides:
1. Actual damages OR \$100 for each violation, whichever is greater.
 2. Court has discretion to award treble damages
 3. Costs
 4. **Reasonable attorney's fees**
- D. Defense: 73 P.S. § 2270.5(d)
- “A debt collector or creditor may not be held liable in any action for a violation of this act if the debt collector or creditor shows by a preponderance of the evidence that the violation was both not intentional and:
- (1) resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error; OR
 - (2) resulted from good faith reliance upon incorrect information offered by any person other than an agent, servant or employee of the debt collector or creditor.”

V. Caselaw

- Threatening or bringing suit on time-barred debt violates the FCEUA and UTPCPL. Comm. V. Cole, 709 A.2d 994 (Pa.Cmwlt. 1998); Richburg v. Palisades Collection LLC, 247 F.R.D. 457 (E.D. Pa. 2008).
- Giving a faulty TILA disclosure in a mortgage refinancing violates FCEUA if it misrepresents the nature and status of the debt owed. Jefferies v. Ameriquest Mortg. Co., 543 F. Supp. 2d 368, 388 (E.D. Pa. 2008).

The Fair Debt Collection Practices Act

15 U.S.C. § 1692 et seq.

I. Overview

- A. Enacted in 1978 to prevent personal bankruptcy, marital instability, loss of employment and invasion of personal privacy.
- B. Prohibits false, deceptive, misleading, harassing, abusive and offensive conduct during collection of consumer debts.

II. Definitions

- A. “Consumer”: any natural person obligated or allegedly obligated to pay a debt. 15 U.S.C. § 1692a(3).
- B. “Debt”: any obligation or alleged obligation of a consumer to pay money for goods or services that are primarily for personal, family or household purposes. 15 U.S.C. § 1692a(5).
 - a. DOES NOT COVER taxes, criminal restitution. Obligation must result from a consumer transaction.
 - b. DOES NOT COVER businesses or individuals alleged to owe debts incurred in the operation of a business.
- C. “Debt Collectors”: any person who uses any instrumentality of interstate commerce (phone, mail, email) in any business, the principal purpose of which is collection of the debts of another. 15 U.S.C. § 1692a(6).
 - a. APPLIES TO:
 - i. Attorneys who regularly collect debts. Heintz v. Jenkins, 514 U.S. 291, 115 S.Ct. 1489 (1995).
 - ii. Creditors who hold themselves out to be debt collectors.
 - b. DOES NOT APPLY TO:
 - i. “Creditors”: any person or entity that extends credit, creating a debt, to whom the debt is owed. 15 U.S.C. § 1692a(4). Examples: Chase Bank, MBNA Bank, HSBC.
 - ii. Any officer or employee of the creditor.
 - iii. Any officer or employee of the United States or any State.

iv. Companies with common ownership with a creditor.

v. Anyone attempting to serve legal process.

D. "Communication": conveying of information regarding a debt directly or indirectly to any person through any medium. 15 U.S.C. § 1692a(2).

III. Requirements and Prohibitions (this is not a complete list)

A. Restricted Communications

- a. Cannot discuss the debt with a 3rd party. 15 U.S.C § 1692b(2).
- b. Can only contact a 3rd party one time for the purpose of obtaining location information. 15 U.S.C. § 1692b(3)
- c. Can't call before 8am or after 9pm. 15 U.S.C. § 1692c(a)(1).
- d. Cannot contact consumer if known to be represented by an attorney. 15 U.S.C. § 1692c(a)(2)
- e. Cannot contact consumer's place of work if consumer notified debt collector not to call work. **Oral notice is sufficient.** 15 U.S.C. § 1692c(a)(3).
- f. Cannot contact consumer if consumer advises debt collector in writing to cease communications OR that consumer refuses to pay. 15 U.S.C. § 1692c.

B. Abuse/Harassment

- a. Act provides a general prohibition against harassing, abusive and/or oppressive conduct. 15 U.S.C. § 1692d.
- b. Collector can't threaten violence or use of criminal activity towards consumer or property. 15 U.S.C § 1692d(1).
- c. Collector can't use obscene or profane language. 15 U.S.C. § 1692d(2).
- d. Collector can't publish lists of debtors or advertise debts, including blacklisting. 15 U.S.C. § 1692d(3).
- e. Collector can't cause phone to ring repeatedly for purposes of harassing or annoying. 15 U.S.C. § 1692d(4).

- f. Collector can't place calls to consumer without meaningful disclosure of identity. 15 U.S.C. § 1692d(6).

C. False, Deceptive or Misleading

- a. FDCPA provides a general prohibition against use of false, deceptive or misleading collection tactics. A collector's actions are to be interpreted from the perspective of the "**least sophisticated consumer.**" Martsof v. JBC Legal Group, P.C., 2008 U.S. Dist. LEXIS 6876 (M.D. Pa. Jan. 30, 2008); Nelson v. Select Fin. Servs., 430 F. Supp. 2d 455, 457 (E.D. Pa. 2006).
- b. Collector cannot make any false, deceptive or misleading statements. 15 U.S.C. § 1692e, e(10).**
- c. Collector cannot falsely represent character, amount or legal status of debt. 15 U.S.C. § 1692e(2)(A).
- d. Collector cannot falsely represent himself/herself as an attorney. 15 U.S.C. § 1692e(3).
- e. Collector cannot state or imply that non-payment will result in arrest or criminal prosecution. 15 U.S.C. § 1692e(4).**
- f. Collector cannot threaten suit, garnishment or seizure of property without legal ability to do the same. 15 U.S.C. § 1692e(5). Ex: Threatening suit to collect a time-barred debt. Martsof v. JBC Legal Group, P.C., 2008 U.S. Dist. LEXIS 6876 (M.D. Pa. Jan. 30, 2008).
- g. Collector cannot report or threaten to report false credit information (like fraud). 15 U.S.C. § 1692e(8). (ties to FCRA)

D. Unfair or Unconscionable

- a. Act provides general prohibition against the use of any unfair or unconscionable means to collect a debt. 15 U.S.C. § 1692f.
- b. Collector cannot attempt to collect any amount not authorized by the agreement creating the debt or permitted by law. (This usually comes up if collector takes more than authorized by electronic funds transfer.) 15 U.S.C. § 1692f(1).
- c. Collector cannot accept or solicit postdated check without providing written notice of at least 3 days that intends to deposit. 15 U.S.C. § 1692f(2).

- d. Collector cannot accept or solicit postdated check for purpose of threatening criminal prosecution. 15 U.S.C. § 1692f(3).

E. Notice Requirements

- a. Notices sent pursuant to Section 1692g are to be interpreted from the perspective of the "**least sophisticated consumer.**" Martsoff v. JBC Legal Group, P.C., 2008 U.S. Dist. LEXIS 6876 (M.D. Pa. Jan. 30, 2008); Nelson v. Select Fin. Servs., 430 F. Supp. 2d 455, 457 (E.D. Pa. 2006)
- b. Collector shall provide the following notices:
 - i. Initial communication (oral or written): "This communication is from a debt collector in an attempt to collect a debt. Any information obtained will be used for that purpose." 15 U.S.C. § 1692e(11).
 - ii. Each subsequent communication: "This communication is from a debt collector," or "this is an attempt to collect a debt." 15 U.S.C. § 1692a(11).
 - iii. Within 5 days of initial communication (oral or written), in writing:
 - 1. Amount of the debt, 15 U.S.C. § 1692g(a)(1);
 - 2. Name of the creditor owed 15 U.S.C. § 1692g(a)(2);
 - 3. Right to dispute validity within 30 days, 15 U.S.C. § 1692g(a)(3); and
 - 4. Name and address of the original creditor, 15 U.S.C. § 1692g(a)(5).
 - 5. If disputed by consumer within 30 days, collector will provide verification of the debt, 15 U.S.C. § 1692g(a)(4).

IV. Enforcement

- A. FDCPA is a strict liability statute. 15 U.S.C. § 1692k; Foti v. NCO Fin. Sys., 424 F. Supp. 2d 643 (S.D.N.Y. 2006).
- B. FDCPA claims have a one year statute of limitations. 15 U.S.C. § 1692k(d).

- C. Claims can be brought in state or federal court. 15 U.S.C. § 1692k(d); Itri v. Equibank, N.A., 318 Pa. Super. 268, 282 (Pa. Super. Ct. 1983).
- D. Upon successful litigation of an individual suit, plaintiff/consumer is entitled to:
- a. Any actual damages, 15 U.S.C. § 1692k(a)(1), including emotional distress, McNally v. Client Services, 2008 U.S. Dist. LEXIS 66845 (W.D. Pa. 2008); and
 - b. Statutory damages of up to \$1000, 15 U.S.C. § 1692k(a)(2)(A); and
 - c. Costs expended in litigation, 15 U.S.C. § 1692k(a)(3); and
 - d. Reasonable attorney's fees, 15 U.S.C. § 1692k(a)(3).
Examples:
 - **\$24,693.80** in Nelson v. Select Financial Serv., Inc., 2006 U.S. Dist. LEXIS 42637 (E.D.Pa. 2006)(collector used the phrase "verifies the validity of this debt" in a letter to debtor);
 - \$9195.83 in Rivera v. Corporate Receivables, Inc., 540 F. Supp. 2d 329 (D. Conn. 2008).
 - \$5713 in Holliday v. Cabrera & Assocs., P.C., 2007 U.S. Dist. LEXIS 161 (E.D. Pa. Jan. 3, 2007)
- E. Upon successful litigation of a class action, the class of consumer is entitled to:
- a. The lesser of \$500,000 or 1% of the net worth of the collector. 15 U.S.C. § 1692k(a)(2)(B); and
 - b. Costs expended in litigation, 15 U.S.C. § 1692k(a)(3); and
 - c. Reasonable attorney's fees, 15 U.S.C. § 1692k(a)(3).
- F. Defenses
- a. Factual dispute
 - b. Bone fide error:
 - i. Violation was NOT intentional, AND
 - ii. Resulted from bona fide error, AND
 - iii. Collector employs reasonable procedures to prevent such violations. Piper v. Portnoff Law Associates, 274 F.Supp.2d 681 (E.D.Pa. 2003).

- iv. Burden of proof is on the collector.
- v. Generally only applies to clerical or factual errors. Picht v. Jon R. Hawks, Ltd., 236 F.3d 446, 451-52 (8th Cir. 2001); Pipiles v. Credit Bureau of Lockport, Inc., 886 F.2d 22, 27 (2nd Cir. 1989); Baker v. GC Servs. Corp., 677 F.2d 775, 779 (9th Cir. 1982).
- vi. Intentionally excluding required language is not a bona fide error. Nielsen v. Dickerson, 307 F.3d 623, 640 (7th Cir. 2002).

V. Recent Amendments to FDCPA and Recent Caselaw

A. Amendments

- a. FDCPA-compliant collection activities may be undertaken by debt collectors during the 30-day validation period absent a consumers request for validation. 15 U.S.C. § 1692g(b).
- b. Any collection activities conducted within 30-day validation period must not overshadow consumer's validation rights. 15 U.S.C. § 1692g(b).
- c. Formal pleading in a civil action does not constitute the initial communication. 15 U.S.C. § 1692g(c).
- d. Notices not related to collection of debt, such as IRS forms, Gramm-Leach-Bliley Act or other forms required by state or federal law do not require 1682e(11) notice. 15 U.S.C. § 1692g(e).
- e. Exceptions were added for private entities employed by the government to collect fees, fines and restitution for bad checks. 15 U.S.C. § 1692p.

B. Recent Case Law

Note: Since this is a federal statute, there are hundreds of cases interpreting the provisions outlined here, and we have not attempted to summarize them, but we are providing a few recent cases of interest.

- a. No "bona fide error" defense for mistakes of law. Letter can't say "you must dispute in writing." Jermyn v. Carlisle, McNellie, et al. - US Supreme Court - April 21, 2010, (<http://www.supremecourt.gov/opinions/09pdf/08-1200.pdf>)
- b. Threatening or bringing suit on time-barred debt violates the FDCPA. Martsolf v. JBC Legal Group, P.C., 2008 U.S. Dist. LEXIS 6876 (M.D. Pa. Jan. 30, 2008); Richburg v. Palisades Collection LLC, 247 F.R.D. 457 (E.D. Pa. 2008).

- c. Vicarious liability: The client of an attorney who is a "debt collector," as defined in § 1692a(6), is vicariously liable for the attorney's misconduct if the client is itself a debt collector. Duraney v. Wash. Mut. Bank F.A., 2008 U.S. Dist. LEXIS 72087 (W.D. Pa. Sept. 11, 2008).
- d. A debtor's failure to request validation does not waive any right the debtor might have to deny validity at a later date, and telling a debtor that failing to respond will verify the validity of the debt violates FDCPA. Nelson v. Select Financial Serv., Inc., 2006 U.S. Dist. LEXIS 42637 (E.D. Pa. 2006); Gigli v. Palisades Collection, L.L.C., 2008 U.S. Dist. LEXIS 62684 (M.D. Pa. Aug. 14, 2008).
- e. A debt collection letter can be deceptive under the FDCPA even if it only implies that it is from an attorney. Using the phrase "Legal Department" could imply to the least sophisticated debtor that a lawyer was involved in drafting or sending the letter. Rosenau v. Unifund Corp., 539 F.3d 218 (3d Cir. Pa. 2008)
- f. The FDCPA does apply to litigation activities, including formal pleadings by attorneys. Phath v. J. Scott Watson, P.C., 2008 U.S. Dist. LEXIS 17563 (E.D. Pa. Mar. 7, 2008). See exception for 1692g notices.
- g. A writing is deceptive where it can reasonably be read to have two or more different meanings, one of which is inaccurate. A letter was misleading because it gave the impression that the debt was being pursued by "high-ranking officer of the company," when in fact it was not, thereby creating a false impression as to source, authorization or approval. Campuzano-Burgos v. Midland Credit Mgmt., 497 F. Supp. 2d 660 (E.D. Pa. 2007).
- h. "Mini-Miranda" (1692e(11) notice) is required when debt collector leaves pre-recorded message for debtor. Foti v. NCO Financial Systems, Inc., 424 F.Supp.2d 643 (S.D.N.Y. 2006).

VI. Other statutes that may apply:

Telephone Consumer Protection Act of 1991 (47 U.S.C. § 227)

Fair Credit Extension Uniformity Act (73 P.S. § 2270.1 et seq.)

Unfair Trade Practices and Consumer Protection Law (73 P.S. § 201-1 et seq.)